



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable B. T. Walters  
County Auditor  
Smith County  
Tyler, Texas

Dear Sir:

Opinion No. 5-3262  
Re: Collection of fine and costs  
in Justice Court and related  
matter.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"In making an audit of our Justices of the Peace, we find quite a number of misdemeanor cases on their dockets that have not been reported to the County. In most of these cases judgment has been rendered and fine imposed.

"When these cases are brought to the attention of the Justices they contend their responsibility ends when the defendant is found guilty and is placed in the custody of the Sheriff or Constable. The arresting officers contend that in many cases judgment is rendered and fine assessed and yet the defendant is given his freedom by the Justice of the Peace. One of several reasons might be given for this action by the Justice. After several weeks have passed it is difficult to tell with any degree of certainty by whom the convicted party might have been released. To clear up this matter please give us your opinion on the following questions:

"In misdemeanor cases where judgment is rendered and fine imposed to whom should the County Auditor look for collection of fines and costs?

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"In cases where the docket of the Justice of the Peace shows a person was charged with a misdemeanor but no further action is shown what evidence should the Justice furnish in removing such cases from his docket? How long should such cases be permitted to remain on the dockets before definite information as to their status is given, or final disposition is made?

"In your consideration of the above questions please bear in mind Smith County operates on the Officer's Salary Law through out."

Articles 909, 916, 917, 918, 920 and 928, Vernon's Annotated Texas Code of Criminal Procedure, read as follows:

"Art. 909. When the jury have agreed upon a verdict, they shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment thereon."

"Art. 916. All judgments and final orders of the justice court shall be rendered in open court and entered upon his docket."

"Art. 917. The judgment, in case of conviction in a criminal action before a justice of the peace, shall be that the State of Texas recover of the defendant the fine and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and that execution issue to collect the same."

"Art. 918. If the defendant be not in custody when judgment is rendered, or if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail until he is legally discharged."

"Art. 920. A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

"1. That he is too poor to pay the fine and costs, and

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"2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

"But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket."

"Art. 698. On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the Court may on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the Court; but in no event shall the judgment be deferred for a longer period of time than six (6) months. On expiration of the time fixed by the order of the Court, the Court or Judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 4, Title 9, of the Code of Criminal Procedure of the State of Texas. Provided further, that the Court or Judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his own recognizance, or may require him to enter into bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day set in the order and discharges the judgment in the manner provided by Chapter 4, Title 9 of the Code of Criminal Procedure of the State of Texas; and for the enforcement of any judgment entered, all writs,

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processes and remedies of the Code of Criminal Procedure are made applicable so far as necessary to carry out the provisions of this Article."

Article 381, Vernon's Annotated Texas Penal Code, reads as follows:

"Art. 381. Whenever any officer who is by law charged with the issuance or execution of process, either in civil or criminal actions corruptly and wilfully refuses to issue or execute such process, or corruptly or wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be fined not exceeding five hundred dollars, and may be imprisoned in jail not exceeding one year."

We quote from Vol. 12, Texas Jurisprudence, Criminal Law, Proceedings in Justice Courts, Section 436, pages 837 and 838, as follows:

"When the jury have agreed upon a verdict, they shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment thereon."

"In case of conviction the judgment

'shall be that the State of Texas recover of the defendant the fine and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and that execution issue to collect the same.'

"All judgments and final orders of the justice shall be rendered in open court and entered upon his docket.' It is the better practice to enter the judgment in the docket contemporaneously with its pronouncement, but delay in making the entry will not invalidate the judgment. No formal judgment is necessary;

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any entry showing the result is a sufficient judgment. File papers and a judgment of conviction are not rendered inadmissible in evidence by the fact that the justice's file-mark does not show the precinct of which he was justice. The statute does not require that the defendant be present when the judgment is rendered, and the judgment is not invalidated by the fact that he is not present when it is entered in the docket.

"If the defendant be not in custody when judgment is rendered, or if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail until he is legally discharged."

Article 787, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"When a judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment shall be sufficient to authorize such imprisonment."

Article 577, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"The district or county attorney may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge."

When a defendant is convicted in justice court it is the duty of the justice to render judgment that the State of Texas recover of the defendant the fine and costs, and that the defendant (if present) remain in the custody of the sheriff (or constable as the case may be) until the fine and costs are paid. When this character of judgment is rendered it then becomes the duty of the sheriff or

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constable having custody of the defendant to retain custody of said defendant until the fine and costs are paid, unless the judgment is superseded by the granting of a new trial or same is appealed from within the time allowed by law. A certified copy of the judgment will authorize such imprisonment. The justice has no pardoning power and has no authority to extend credit to the defendant. However, the justice has the power to defer the judgment provided he does so in the prescribed manner set out in Article 698, supra. The power to defer the judgment under Article 698, supra, however, does not authorize the justice to interfere with the collection of his judgment after it is entered and has become final.

If the defendant is not present at the time the judgment is rendered in justice court it then becomes the duty of the justice to issue a capias for the defendant. After the capias is issued it then becomes the duty of the sheriff or constable to execute it by arresting the defendant and by holding him in custody until his fine and costs are legally discharged.

The justice is a judicial officer - it is his duty to render the proper judgment and issue any process that may be necessary to enforce the judgment; but he is not an enforcing or collecting officer. The sheriff or constable is the enforcing or collecting officer - if the defendant be present when the justice renders his judgment, it is the duty of such officer to enforce the judgment and should disregard any unlawful instructions of the justice to extend credit to the defendant. If the justice decided to give the defendant a new trial and set aside his judgment, that would be another matter. If the defendant were not present at the time the justice rendered his judgment the justice is required to issue a capias and the constable or sheriff is required to serve it. If the justice wilfully and corruptly refused to issue a capias he would be subject to prosecution under Article 381, V. A. T. P. C., supra. Likewise, if the sheriff or constable wilfully and corruptly refused to execute the capias he would be subject to prosecution under Article 381, V. A. T. P. C., supra. In a proper case the failure to issue or execute process would perhaps constitute grounds for removing the justice, sheriff or constable, as the case may be, from office.

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You are respectfully advised that it is the opinion of this department that you should ordinarily look to the sheriff or constable as the case may be for the collection of fines and costs in misdemeanor cases. However, in some cases such officers may be justified in their failure to collect or enforce the judgment by virtue of their inability to secure capias from the justices. And in some cases you may find that they neglect to serve and execute the capias delivered to them by the justice. The facts in each particular case will determine where the neglect of duty lies.

Article 916, V. A. C. C. P., supra, provides that all judgments and orders of the justice shall be rendered in open court and entered upon his docket. Article 1081, V. A. C. C. P., requires the justice to keep a book in which shall be entered the number and style of each criminal action in his court, etc. Article 577, V. A. C. C. P., supra, provides that criminal cases may be dismissed on the written motion of the district or county attorney with the consent of the presiding judge, etc.

It is our opinion that the justice should place on his docket all cases filed in his court and that his docket should show the disposition of the case, if any, such as conviction, acquittal or dismissal. If a criminal case is filed with the justice and is not tried or dismissed, we think it is within the sound discretion of the justice and county attorney as to what length of time they will allow it to pend in justice court prior to a dismissal thereof, as the matter of dismissing criminal cases in justice court is a matter to be decided jointly by the county attorney and by the justice of the peace, as provided by Article 577, V. A. C. C. P., supra.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

APPROVED MAR 25, 1941

ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT  
ATTORNEY GENERAL

By

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WJF:CO

